There is no need for us to set out the facts — we need only say that the trial record discloses this to be a bad case. By the active co-operation of the appellant in consorting with two persons, whom he knew to be armed, a Chinese was murdered by them.

The appellant gave oral notice of appeal at the end of the trial. He has not filed any written grounds of appeal in amplification of that oral notice. But for the fact that the question arises whether the trial Judge should have considered the provisions of sub-section (2) of section 15 of the Juvenile Courts Ordinance, 1947, (hereinafter in this judgment referred to as "the Ordinance") before sentencing the appellant, we would have had no hesitation in summarily rejecting this appeal under section 27 of the Courts Ordinance, 1948.

Sub-section (2) of section 15 of the Juvenile Courts Ordinance — the Ordinance came into force as recently as the 1st of December, 1949 — reads :—

"No young person shall be sentenced or ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine, or committal to a place of detention, approved school, or advanced approved school, or otherwise."

Under the Ordinance a 'young person' means a person who has attained the age of fourteen years and is under the age of seventeen years, and therefore the appellant is a young person.

One of the prescribed punishments for an offence against Regulation 5(1) of the Emergency Regulations, 1948, is death, and therefore a Juvenile Court constituted under the Ordinance had no power to try the the appellant — see sub-section (4) of section 4 of the Ordinance, which reads :—

"A Juvenile Court shall have jurisdiction to try all offences except offences punishable with death."

The Ordinance does not affect the powers of the Supreme Court — see section 40 thereof — and therefore the appellant was properly tried by the High Court. By the same section the Supreme Court may exercise all the powers which a Juvenile Court may exercise under the Ordinance in respect of juvenile offenders.

As already stated, one of the prescribed punishments for an offence against Regulation 5(1) of the Emergency Regulations 1948, is death, the other punishments being penal servitude and whipping. Imprisonment, as opposed to penal servitude, is not one of the prescribed punishments for that offence. This Court, in *Public Prosecutor v. Lee Ah Sam (f)*[1] decided that penal servitude and rigorous imprisonment are two different forms of punishment.

Sub-section (2) of section 15 of the Ordinance does not mention penal servitude, whereas sub-section (1) does so; that sub-section reads :—

"No child shall be sentenced or ordered to be imprisoned or be sent to penal servitude for any offence or be committed to prison in default of payment of a fine, damages or costs."

Contrasting the language of those two sub-sections, we agree with Mr. Cohen, Federal Counsel, that since the Legislature has specifically included penal servitude in sub-section (1), and specifically excluded it from sub-section (2), the provisions of the latter sub-section apply only when the offence for which a young person has been found guilty is punishable with imprisonment. In such a case the trial Court must have regard to the provisions of that sub-section.

It follows that the learned trial Judge was correct in not having recourse to the provisions of sub-section (2) of section 15 of the Ordinance before sentencing the appellant.

As regards the period of penal servitude imposed, we have said already that this is a bad case, and we see no reason why that period should be reduced.

This appeal is dismissed.

Appeal dismissed.

TEJA SINGH & MOHAMED NASIR v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Spenser-Wilkinson, J.) January 28, 1950]

[Johore — Criminal Appeal No. 12 of 1949]

Penal Code, s. 161 — Evidence of agent provocateur — Whether corroboration is necessary — Joint trial — Sentence — Criminal Procedure Code, s. 170.

In this case the two appellants appealed against their conviction and sentence for abetment of bribery and bribery respectively. On appeal it was argued inter alia (a) that the methods adopted by the police in this case in procuring the commission of a traffic offence by the lorry driver; in approaching Teja Singh to use his influence with the Magistrate, thereby provoking him to commit the offence wherewith he is now charged; and in further aiding the commission of the offence of bribery by providing the funds were methods wholly foreign to the spirit of our law and that the Courts should frown upon such questionable methods to the extent of refusing to accept the evidence of witnesses who stoop to use them; (b) that the learned President of the Sessions Court exercised his discretion wrongly in trying the two appellants jointly.

Held, (1) that the police officers were at most agents provocateurs and not accomplices and that on the facts of this case the evidence of the police officers was properly received in evidence; (2) that the learned President exercised his discretion rightly in ordering a joint trial in this case; (3) that the offences in these cases were of corruption in the course of the administration of justice and therefore the sentence of two years' rigorous imprisonment imposed were not excessive.

Semble: The remarks of the Lord Chief Justice in **Brannan** v. Peek (2) are applicable to the action of the police in the present case in sending the lorry driver into Johore with the express purpose of committing an offence. It was unfortunate that the police authorities thought it necessary to adopt this course in this case and it is hoped that the new legislation which has been passed for the purpose of dealing with corruption will make it unnecessary in future for anything of this kind to be repeated.

Cases referred to :—

(1) *Public Prosecutor v. Haji Ismail* (1939) F.M.S.L.R. 134 at pp. 139 and 140; (1940) M.L.J. 76 at pp. 78 and 79.
(2) *Brannan v. Peek* (1947) 2 All E. R. 573.
(3) *Hazura Singh* A.I.R. 1929 Lahore 436.
(4) *Rex v. Bickley* 73 J.P. 239.
(5) *Rex v. Mortimer* 80 L.J. K.B. 76.
(6) *Md. Usuf Khan v. Emperor* A.I.R. 1929 Nag. 215.
(7) *In re Lakshminavayana Aiyer* A.I.R. 1918 Mad. 738.
(8) *Queen Empress v. Javecharam* I.L.R. 19 Bom. 363.
(9) *Emperor v. Chaturbhuj Sahu* I.L.R. 38 Cal. 96.
(10) *Rex v. Mullins* 3 Cox's Cr. Cases 526 at p. 531.
(11) *Rex v. Grondkowshi and Malikowski* (1946) K.B. 369.
(12) *Rex v. Wright* 33 Cr. App. R. 22.
(13) *Rex v. Davies* (1906) 1 K.B. 32 at pp. 40 and 41.

CRIMINAL APPEAL from Sessions Court.

Sir Roland Braddell (*R. H. Green* with him) for the 1st appellant.

A. J. Braga for the 2nd appellant.

D. B. W. Good (*M. Suffian* with him) for the respondent.

Spenser-Wilkinson, J. : — The appellants were tried jointly in the Sessions Court in Johore Bahru on charges of bribery and abetment thereof. The 2nd appellant was charged as follows :—

That you at about 8 p.m. on the 2nd November, 1949, at the Heng Kee Restaurant, Johore Bahru, being a public servant, to wit a First Class Magistrate, did accept for yourself from one Teja Singh s/o Bhola Singh a gratification, to wit fifty dollars in local currency, other than legal remuneration, as a motive for showing in the exercise of your official functions favour to one Ng Keow Pong in Criminal Case No. 1327/49 then pending before you in the Court of the First Class Magistrate at Johore Bahru wherein the said Ng Keow Pong was charged with offences against the Motor Vehicles Commercial Use Regulations and the Public Service and Goods Vehicles Licensing Regulations, and you thereby committed an offence punishable under section 161 of the Penal Code.

The first appellant was charged under sections 109 and 161 with abetment of the offence alleged against the 2nd appellant. Both appellants were convicted and were sentenced to two years rigorous imprisonment.

The case for the prosecution was that two police officers in plain clothes, upon the instructions of the C.I.D. in Singapore, accompanied a Chinese lorry driver in a lorry loaded with iron bars from Singapore into Johore where the lorry (by arrangement) was stopped by the police at Scudai about 10 miles beyond Johore Bahru. The driver was thereupon charged by the Johore police with driving the lorry without the necessary haulage permit or goods vehicle licence. He was bailed by the police to appear before the Magistrate at Johore Bahru at 10.00 a.m. next day and the bail money was provided by one of the plain clothes police officers. Next morning the two plain clothes police officers, posing as friends or employers of the lorry driver, Ng Keow Pong, approached the 1st appellant in Johore Bahru asking him to use his influence with the Magistrate to help in procuring leniency for him. This the 1st appellant agreed to do. They all went to the Court building and the 1st appellant entered the Magistrates' Chambers. About half an hour later the 1st appellant came out of the Court building. He said that the case would be mentioned that day and postponed and that Ng Keow Pong's party should come back next day with $100. Ng Keow Pong duly appeared in Court, the case was postponed and Court bail granted in the sum of $200. The bail money was again provided by the plain clothes police.

The two police officers and Ng Keow Pong met the 1st appellant in Johore Bahru at about 4.00 p.m. the next day as arranged, armed with $100 in $10 marked notes supplied by the C.I.D. in Singapore. This $100 was handed to 1st appellant in an envelope. It was then arranged that the two officers and Ng Keow Pong should be at a certain restaurant at 6.30 p.m. and there wait in order to see the Magistrate who, it was said, would be at the restaurant at 7.30 p.m.

At 6.30 p.m. Ng Keow Pong and the two police officers met the 1st appellant at his shop and they all went together to the Heng Kee Restaurant. At 7.30 p.m. the Magistrate, who is the 2nd appellant, arrived and proceeded to take a meal with his wife and child in one of the cubicles. The 1st appellant approached him and told him that these people had come and wished to see him. The Magistrate told him to wait

until he had had his food. The 1st appellant meanwhile counted over the $100, placed $50 in his pocket and the remaining $50 were replaced in the envelope which was then placed on the table. Presently the Magistrate went into the next cubicle where the 1st appellant and one of the police officers (the 1st prosecution witness, Aziz, who throughout conducted most of the negotiations) were sitting and a conversation to the following effect is alleged to have taken place. The full details are deposed to by the 1st prosecution witness but parts of the conversation were also overheard by the other police officer and by the lorry driver. The Magistrate said to the 1st appellant "What is the matter" or "What is this about". The 1st appellant replied saying "These people ask your assistance regarding their lorry which was stopped and the driver arrested. The driver's licence is much endorsed." The Magistrate then asked if there was any document or letter in respect of the matter and the 1st prosecution witness replied "Yes" and handed him the consignment note in respect of the goods in the lorry. The Magistrate read it over and returned it and then said that the driver should not plead guilty in Court. He went on to say words to the following effect: — "When I question the driver as to why he did not get a Johore permit the driver should reply that he had asked those two people if they had taken out a Johore permit and they had said 'Yes' ". Then the 1st appellant said "Sir, take this $50 first. After the case is over I will be surety for the other $50." The Magistrate then took the envelope containing the $50 from the table, put it in his pocket and went out.

Immediately afterwards the 1st appellant was searched in the restaurant by a different police officer and 5 of the $10 notes supplied by the police were found in his pocket. Later that evening the envelope containing the other $50 was found by Mr. Bovell, the Officer Commanding the C.I.D. Johore in the Magistrate's bedroom on the top of a gramophone.

The 1st appellant adduced no evidence at the trial. The 2nd appellant himself gave evidence and also called a waitress from the Heng Kee Restaurant and his wife. The 2nd appellant's version of his interview with the 1st appellant in his chambers was as follows :—

I had seen the 1st defendent about 12th or 14th Oct. in connection with another loan. I had one or two unforeseen payments to make at the end of Oct. I asked 1st defendant for a loan of $300 and he said it was more than he could give for the moment. He came to see me on 1st Nov. 1949 at my chambers between 9 and 10 a.m. He told me in respect of the loan I had asked that he might be able to give me something that night. I told him I was not in need of it then, but if I did I would go and see him. He didn't sit down. He stayed about 3 minutes. Had he stayed for ½ an hour many people would have seen him. He never mentioned any traffic case. He is not in the habit of visiting my chambers . . .

His version of what took place in the restaurant is this :—

Teja Singh pushed the curtain to one side and I saw his face. He said to me 'Inche'. I said 'Yes what do you want?' He said 'I want to see you for a moment'. I said 'I am having my meal. I will see you another time'. He went off. We finished our meal and sat there for some time. Malay music was being played on the radio. It was fairly loud and continued the whole time I was there. We stayed about ½ an hour. I asked for my bill and the waitress told me it had been paid. I asked who paid and she said 'That Sikh'. I asked why he paid and she said 'I don't know.' My wife said she wanted to listen to the music a bit longer, and I moved towards the main entrance. I saw Teja Singh sitting in the next cubicle. I spoke to him and said 'Why did you pay my bill'. He said 'Never mind, Inche, we are friends'. I said 'You must be having a lot of money. What about the thing we spoke of sometime back?' He said 'That's all right. Take this for the time and I will see you later'. He gave me an envelope. I took it and put it in my shirt pocket. He had a friend with him sitting opposite. I had never seen him before.

Later, describing the visit of Mr. Bovell to his house in the evening when the money was found he stated :—

I didn't know what was in the envelope. It was folded lengthways. I assume it contined money. It is not true that I accepted this money in order to show favour to anybody in my official capacity. Nobody was pointed out to me as a person who sought my favour.

The waitress of the restaurant was called for the defence and her evidence about the payment of the bill was as follows :—

After they had finished their food 2nd defendant asked for his bill and I said 'the Bengali has already paid it'. The Bengali was the witness Aziz.

It was argued on behalf of the defence in the Sessions Court that the two police officers who described the events in the restaurant and also the lorry driver were accomplices and that, as there was no corroboration of their evidence there was no case against the 2nd appellant, and consequently no case of abetment against the 1st appellant. The President held, however, that from the time these witnesses approached Teja Singh with the suggestion that he should use his influence with the Magistrate they forsook the role of accomplice and adopted at most that of *agent provocateur*. The President went on, in his judgment to say that, in any event there was corroboration and also stated that even if all these witnesses were accomplices he would have had no hesitation in accepting their evidence.

This part of the judgment of the President was attacked in the argument before me on the ground that this was, in effect, an alternative judgment and that such a judgment in a criminal trial is wrong and should be set aside. No authority was cited in support of this contention and the proposition is, to me, an entirely novel one. I can see nothing wrong in a Court

finding, as a matter of law, that a witness is not an accomplice and then going on to indicate what its finding would be in case it should be held that this matter of law had been wrongly decided. Indeed, in my view, such a course is frequently of great value to an appellate Court. No doubt counsel for the appellants saw the necessity of attacking the President's judgment on this ground, because both alternatives of corroboration and credibility were found against them. In this connection I would refer to the judgment of Cussen J. in *Public Prosecutor v. Haji Ismail*[1] where he criticises certain statements in Gour's Penal Law and then proceeds to lay down, in my opinion with complete accuracy, the law of this country in regard to accomplice evidence. The decision in that case makes it clear, that if, after duly warning itself, a Court believes the evidence of an accomplice then that evidence can be accepted without corroboration. The President in this case has made it very clear that he would have believed these witnessses and would have accepted their evidence without corroboration.

Sir Roland Braddell who appeared for the 1st appellant argued that these witnesses were either *agents provocateurs* whose evidence should not be accepted at all or they were accomplices who were uncorroborated. He contended "that the methods adopted by the police in this case in procuring the commission of a traffic offence by the lorry driver; in approaching Teja Singh to use his influence with the Magistrate, thereby provoking him to commit the offence wherewith he is now charged; and in further aiding the commission of the offence of bribery by providing the funds were methods wholly foreign to the spirit of our law and that the Courts should frown upon such questionable methods to the extent of refusing to acept the evidence of witnesses who stoop to use them."

In support of this argument Sir Roland Braddell relied mainly upon two authorities. The first is the dictum of Lord Goddard L.C.J. in the case of *Brannan v. Peek*[2] which is as follows :—

> There is another point of much greater public importance. The Court observes with concern and disapproval the fact that the police authority at Derby thought it right to send a police officer into a public house to commit an offence. It cannot be too strongly emphasised that, unless an Act of Parliament provides for such a course of conduct — and I do not think any Act of Parliament does so provide — it is wholly wrong for a police officer or any other person to be sent to commit an offence in order that an offence by another person may be detected. It is not right that police authorities should instruct, allow or permit detective officers or plain clothes constables to commit an offence so that they can prove that another person has committed an offence. It would have been just as much an offence for the police constable in the present case to make the bet in the public house as it would have been for the bookmaker to take the bet if in doing so he had committed an offence. I hope the day is far distant when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against someone; if they do commit offences they ought also to be convicted and punished, for the order of their superior would afford no defence.

The second is the case of *Hazura Singh*[3] where Agha Haidar, J. in his judgment says :—

> Khair Din, P.W. 4, is a disreputable police spy and I am not prepared to accept his evidence in support of the conviction. In fact he is a worse character than an ordinary spy, he is an **agent provocateur** and according to the best traditions of the highest Courts in the free and civilised countries of the world the evidence of such witnesses is looked upon with suspicion and distrust and is seldom, if ever, relied upon in support of a conviction.

Unfortunately in the report of this last case the facts are not set out and it is therefore not possible to know exactly what the learned Judge meant when he used the expression "agent provocateur". This decision therefore is of no assistance to me. The case of *Brannan v. Peek* does not decide that the evidence of the police officers there in question should be rejected. I cannot look upon this case as an authority for the proposition that the evidence of an *agent provocateur* cannot be accepted.

Sir Roland stated that he could find no reference to *agents provocateurs* in the English text books and suggested that the reason for this was that the evidence of such persons was never used in England. I find, however, the following passage in *Roscoe's* Criminal Evidence, 15th Edition p. 156 :—

> **Agents provocateurs, spies, informers, detectives & etc. not accomplices.** Such persons employed in entrapping criminals 'are entirely distinguished in fact and in principle from accomplices', per Maule, J., **Mullins**, 3 Cox C.C. 526: spy on Chartists, 1848; 'and I do not see that a person so employed deserves to be blamed if he instigates offences no further than by pretending to concur with the perpetrators.' Followed in **Bickley** 2 Cr. A.R. 63; 73 J.P. 239; 53 S.J. 402, 1909: woman police spy buy noxious drug.

The following passage also appears in *Phipson* on Evidence, 8th Edition p. 478 :—

> The rule requiring the corroboration of accomplices does not apply to two classes of accomplices: (a) **Informers** — i.e. persons who have joined in, or even provoked, the crime as police-spies (**R. v: Bickley**, 73 J.P. 239; or the police, who have assented thereto, **R. v: Heuser**, 6 Cr. App. R. 76); . . .

The head-note to the case of *Rex v. Bickley*[4] referred to in the above extracts reads as follows :—

> The evidence of a police spy or **agent provocateur** is not that of an accomplice and does not require corroboration.

It appears from the extract above quoted that the learned author of Roscoe's Criminal Evidence classed *agents provocateur* in the same category as spies, informers and detectives. I have no doubt that there may be witnesses in any of these categories who may be wholly unworthy of credit but in my view the credit of any such witness depends upon the facts of each

particular case and not upon the particular label which can be attached to him. In the present case the police witnesses were both detective corporals who were carrying out the instructions given to them. There is nothing disreputable about them. The worst that might be said about them as witnesses is they might naturally wish their efforts in carrying out their instructions to be successful and they might, therefore, be expected to have a strong bias in favour of the prosecution case. But the learned President has said this about them in his grounds of judgment :—

I take this opportunity of reaffirming how impressed I was with the witnesses called for the prosecution. It seemed to me that there was nothing in their manner from which it could be inferred that they had in any way been wrongfully coached, but on the contrary they were honestly trying to tell what they had seen and heard; where they didn't know they didn't hesitate to say so. It was this feature about them which prompted me to say in my judgment that even if they had been uncorroborated accomplices I should have had no hesitation in acting on their testimony after careful warning.

The President's view of the evidence of the witnesses in question is supported by the record. These three witnesses did not each tell exactly the same story but each gave his version of what he saw and heard from his own particular point of view and I can detect no trace of any exaggeration or of attempts to improve the case. I am not prepared to hold that the evidence of these witnesses is not acceptable simply because the learned President has described them as having adopted the role of "at the most of *agents provocateurs*". I think the true answer to this part of the argument on behalf of the appellants is contained in the following passage from the judgment of Lord Alverstone, C.J. in *Rex v. Mortimer*[5] :—

I do not like the police traps any more than does anybody else; but at the same time there are some offences the commission of which cannot be found out in any other ways, and unlawful acts done in consequence of the trap are none the less unlawful.

In support of the contention that these witnesses were actually accomplices Sir Roland Braddell relied on the Indian cases of *Md. Usuf Khan v. Emperor*[6] *in re Lakshminavayana Aiyer*[7] and *Queen Empress v. Javecharam*[8]. In the last of these cases the Court held the witness in question to be an accomplice but with some doubt and in the former two cases the facts did not show the witnesses in question to be entirely free from some participation in the criminal design. I think the law is correctly stated in the case of *Emperor v. Chaturbhuj Sahu*[9] where the head-note reads as follows :—

A person who makes himself an agent for the prosecution with the purpose of discovering and disclosing the commission of an offence, either before associating with wrong-doers or before the actual perpetration of the offence, is not an accomplice but a spy, detective or decoy whose evidence does not require corroboration, though the weight to be attached to it depends on the character of each individual witness in each case. But a person who is associated with an offence with a criminal design, and extends no aid to the prosecution till after its commission is an accomplice requiring corroboration.

In the judgment in this case the following passage appears to me to be of practical value in distinguishing between accomplice and spy :—

It may sometimes be difficult to draw the line of discrimination between an accomplice and a pretended confederate, such as a detective, spy or decoy; but we think, that the line may be drawn in this way:— If the witness has made himself an agent for the prosecution, before associating with the wrong-doers or before the actual perpetration of the offence, he is not an accomplice; but he may be an accomplice if he extends no aid to the prosecution until after the offence has been committed.

After considering the various authorities cited I am content to follow the statement of the law on this point made by Maule, J. in his summing-up in the case of *Rex v. Mullins*[10] :—

An accomplice confesses himself a criminal, and may have a motive for giving information, as it may purchase immunity for his offence. A spy, on the other hand, may be an honest man, he may think that the course he pursues is absolutely essential for the protection of his own interests and those of society; and if he does so, if he believes that there is no other method of counter-acting the dangerous designs of wicked men, I can see no impropriety in his taking upon himself the character of an informer. The government are, no doubt, justified in employing spies; and I do not see that a person so employed deserves to be blamed if he instigates offences 'no further than by pretending to concur with the perpetrators. Under such circumstances they are entirely distinguished in fact and in principle from accomplices, and although their evidence is entirely for the jury to judge of, I am bound to say that they are not such persons as it is the practice to say require corroboration.

Reverting to the remarks of the Lord Chief Justice in *Brannan v. Peek* set out above I think these are applicable to the action of the police in the present case in sending Ng Keow Pong into Johore with the express purpose of committing an offence. As far as that part of the matter is concerned I feel constrained to say that I look upon it as unfortunate that the police authorities thought it necessary to adopt this course. I trust that the new legislation which has been passed for the purpose of dealing with corruption will make it unnecessary in future for anything of this kind to be repeated.

With regard to the subsequent events, however, I do not think that the remarks of Lord Goddard apply and I agree with the view expressed by the President that it was open to Teja Singh when he was approached in the matter, if he had been an honest man, either to refuse to interfere or to have confined his activities to giving advice. The first mention of money clearly came from him and was not, in my opinion, provoked by the police. The actions of the 2nd appellant were, in any event, entirely his own. I hold, therefore, that

the evidence of these police witnesses was properly received.

I now come to the question of joint trial. It was argued before me that the appellants were prejudiced by their having been tried jointly and that I ought to order separate trials for this reason. That a joint trial of the two appellants was permissible in this case is abundantly clear from the wording of section 170 of the Criminal Procedure Code the relevant part of which reads as follows :—

> . . . . when one person is accused of committing an offence and another of abetment of . . . . . the same offence they may be tried together or separately as the Court thinks fit . . .

It was obviously, therefore, in the discretion of the President in this case to order a joint trial. Sir Roland Braddell, indeed conceded in his reply that it was a matter of discretion. But it is contended that the President did not exercise his discretion judicially and that the 2nd appellant in particular was prejudiced because a good deal of the evidence led was admissible only against the first appellant. It was argued that it was impossible for the President to divide his mind into water-tight compartments so as to separate what was admissible against one appellant from what was admissible against the other. In my experience it is frequently necessary for judges and magistrates to do this both in joint trials and also where there are several charges against one accused. Where a Court has failed to bear in mind the necessity of distinguishing the different parts of the evidence admissible in respect of one accused or of one charge then an appellate Court will interfere on the ground that the joinder has resulted in a miscarriage of justice *Rex v. Grondkowshi and Malikowski*[11] cited with approval in *Rex v. Wright*[12]. In my opinion there is no ground whatever in this case for the suggestion that there was any improper prejudice to either of the appellants. Not only has the learned President most clearly distinguished between the parts of the evidence admissible against each of the appellants, but he has also in his judgment set out in detail the evidence upon which he proceeded to the conviction of the second appellant. I would like, with respect, to repeat and adopt the following remarks of the Lord Chief Justice on the subject in *Rex v. Grondkowshi and Malikowski* :—

> . . in Youth v. Reg. the Judicial Committee said that the question of joint or several trials had always been left to the discretion of the presiding judge. The discretion, no doubt, must be exercised judicially, that is, not capriciously. The judge must consider the interests of justice as well as the interests of the prisoners. It is too often nowadays thought, or seems to be thought, that the interests of justice means only the interests of the prisoners.

I am of opinion that the course adopted by the President in ordering a joint trial in this case was the right one, and this ground of appeal therefore fails.

One further point was raised by Mr. Braga on behalf of the 2nd appellant. He pointed to the fact that, when Mr. Bovell went to the Magistrate's house and asked him to produce his money, the latter made no difficulties at all and willingly led Mr. Bovell into the bedroom where the envelope containing the $50 was lying quite openly on the top of the gramophone. It is contended that this was not the conduct of a guilty man and that it goes to prove his innocence. As was pointed out, however, by the Deputy Public Prosecutor who argued the appeal before me, there might be many explanations of this appellant's conduct on this occasion. He may well, for example, have realised that any attempt to conceal the money or to obstruct Mr. Bovell in any way would have been extremely difficult to explain away; or he may, even, have been paralysed with fear. Conduct on such occasions rarely proves much either in favour of or against an accused person; and in this case the evidence is in my opinion equivocal.

The fourth ground of appeal in both petitions of appeal was that the sentences were excessive. No arguments were addressed to me on the question of sentence, but I understood that counsel did not intend to abandon this ground. I have, therefore, given very careful consideration to the sentences imposed and to the reasons given by the President for imposing them. It is not easy to speak with restraint on the subject of corruption in the course of the administration of justice. Corruption in any part of the public service is an evil in regard to which it is hardly necessary for me to comment in view of the special legislation which the legislature has recently found it necessary to enact in order to combat it; but when corruption is found amongst those whose duty it is to administer justice then the situation is, indeed, serious.

The following remarks of Wilmot, C.J., quoted with approval in the judgment of the Court in *Rex v. Davies*[13] although they were made in respect of contempt of Court, apply, in my view, with even greater force to corruption and, slightly paraphrased express in better words than I could what I think should be the attitude of the Courts to offences of this kind :—

> Corruption of magistrates excites in the minds of the people a general dissatisfaction with all judicial determinations . . . and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and dangerous obstruction of justice, and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever . . . . . To be impartial and to be universally thought so are both absolutely necessary for the giving of justice that free, open and unimpaired current which it has for many years found in this country.

In my opinion there is nothing wrong with the sentences which the learned President has imposed and I can see no reason to interfere.

The appeals of both appellants must be dismissed.

Appeal dismissed.